

In the Matter of Merchant Mariner's Document No. Z-1855173-D3 and all other Seaman Documents

Issued to: SAMUEL JOSEPH SMITH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1082

SAMUEL JOSEPH SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 24 March 1958, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. Seven specifications allege that while serving as Chief Cook on board the United States USNS SEBEC under authority of the document above described, between July 1956 and June 1957, Appellant twice failed to turn to; he created two disturbances due to his intoxication; he was once unable to perform his duties due to intoxication; he was wrongfully under the influence of intoxicants on another date; and Appellant wrongfully threatened a fellow crew member, messman George Buss, with a knife.

At the beginning of the hearing on 10 February 1958, Appellant requested a postponement until 26 February to secure the presence of counsel retained by Appellant. The adjournment was granted but Appellant did not appear at the hearing on 26 February. The proceedings were conducted in absentia and the Examiner entered pleas of not guilty on behalf of Appellant. In support of the charge and specifications, the Investigating Officer introduced in evidence documentary exhibits consisting almost exclusively of entries in the ship's Official Logbook and statements attached to the entry relating to the specification alleging the threat against George Buss.

On 6 March, the hearing was reopened to permit Appellant to put in his defense. Appellant appeared without counsel and stated that he could not afford the lawyer who had previously agreed to represent him. Appellant as fully informed of his rights including the rights to counsel, to subpoena witnesses and to take the depositions of distant witnesses. Appellant stated that he would have retained counsel if he could have afforded it but that he desire to represent himself under the circumstances. Appellant testified under oath but presented no other evidence in his behalf. Appellant denied that he was guilty of the offenses alleged but stated that he is now a member of Alcoholics Anonymous.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard. The Examiner rendered the decision in which he concluded that the charge and seven specifications had been

proved. An order as entered revoking all documents issued to Appellant.

The decision was served by mail on 24 March 1958. Appeal was timely filed on 22 April.

FINDINGS OF FACT

Between July 1956 and June 1957, Appellant was serving as Chief Cook on board the United States USNS SEBEC and acting under authority of his Merchant Mariner's Document No. Z-185173. The ship was on a foreign voyage for which Shipping Articles had been signed by Appellant and other members of the crew.

On 13 January while the ship was at Okinawa, Appellant failed to turn to and serve breakfast. At this time, Appellant was in his bunk under the influence of alcohol.

On 6 March, the ship was in the port of Yokosuka when Appellant told messman George Buss to leave the galley where Appellant was attempting to work. He then waved a large French knife at Buss in a threatening manner before surrendering the knife to a crew member named Hanson. Appellant was removed from the galley due to his intoxicated condition.

On 11 April at Manila, Appellant was creating a disturbance while intoxicated. He was ordered below by the Master. Again, on the following day, Appellant was disorderly and intoxicated.

On 30 May at Sasebo, Appellant was intoxicated when he failed to turn to and perform his regular duties which included the preparation of breakfast.

While at sea on 1 June, Appellant was unable to perform his assigned duties due to intoxication. Appellant was ordered below by the Master but refused to remain there. Appellant's condition of intoxication continued on 2 June.

Appellant's prior record consists of a probationary suspension in 1945 for immoral acts. Another document was issued to Appellant in 1949.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the decision was unduly harsh since it was arrived at on the basis of log entries alone without the appearance of witnesses who live on the West Coast. Appellant was not able to subpoena these witnesses to appear in New York.

The Master persecuted Appellant and made untrue log entries against Appellant because of his reports to the Coast Guard about the misconduct by crew members and the favoritism by the Master which led to the complete collapse of order and discipline on the ship.

Contrary to Appellant's desire, he was without counsel at the hearing because he could not afford to hire a lawyer.

Appellant has not had a drink since July 1957.

The Hearing should have been held in Los Angeles where the voyage ended in June 1957 rather than eight months later in New York. In order to reach a just decision, Appellant requests a rehearing on the West Coast where witnesses can be obtained.

OPINION

The entries made in the ship's Official Logbook, and the attachments incorporated therein by reference, are admissible in evidence, under 28 U.S.C. 1732, as exceptions to the hearsay rule. This evidence makes out a prima facie case since the entries are in substantial compliance with the requirements of 46 U.S.C. 702. The entries were properly made and witnessed as to each incident. Appellant was given copies of the entries and opportunity to reply. Several of the attached statements concerning the assault incident on 6 March support George Buss' statement that he was threatened by Appellant with a knife. On the other hand, there is no support in the record for Appellant's claims concerning the Master and conditions on the ship. After considering Appellant's testimony in which he denied his guilt, the Examiner accepted the logbook entries as a truthful account of what took place on the ship with respect to the seven specifications under consideration. I see no reason to change this determination.

Appellant now contends that the hearing should have been held on the West Coast where witnesses from the ship could have been subpoenaed to appear as witnesses. But Appellant did not object to the delay or to the location at the commencement of the hearing. Appellant made no attempt to obtain depositions or to subpoena witnesses (except Hanson who lived in New York City but could not be located by Appellant) although he was fully informed by the Examiner of his right to subpoena witnesses and to take depositions. Certain correspondence with the Coast Guard, which was offered in evidence by Appellant, was excluded by the Examiner after objection by the Investigating Officer. If Appellant desired to submit other correspondence in evidence, he could have requested the Examiner to subpoena it. Nevertheless, Appellant rested his defense without making any specific request to the Examiner to subpoena witnesses (except Hanson), to take depositions or to subpoena documents. It has been held that where logbook entries have not been discredited and depositions of fellow crew members have not been taken, an action may be decided against a seaman whose testimony is in conflict with the logbook entries. Selby V. United States (D.C. N.Y., 1958), 161 F. Supp. 689, 1958 A.M.C. 1600.

Concerning Appellant's lack of counsel at the hearing, the record shows that Appellant failed to appear when the hearing was reconvened after adjournment for Appellant to obtain counsel. The hearing was later reopened to permit Appellant to put in his defense. He was still not represented by counsel and stated that he desired to represent himself because he could not afford a lawyer. Under the circumstances, the Examiner was correct in not prolonging the matter any further. Appellant had been given adequate opportunity to obtain counsel of his own choice and the Coast Guard is not

required to furnish counsel for seamen in these proceedings. Since the Examiner protected Appellant's rights as fully as possible, it would serve no useful purpose to accede to Appellant's request to remand this case for further proceedings either in New York or on the West Coast. Both Appellant and the one seaman whose testimony he specifically requested live in New York.

Appellant's repeated intoxication was the ostensible source of his trouble on the ship. These offenses justify revocation especially since Appellant was issued another document after a prior revocation. The fact that Appellant had no difficulties during the first six months of the voyage does not mean that his later troubles were the fault of the Master. The indications that Appellant is a confirmed alcoholic are substantiated by his testimony that he is now a member of Alcoholics Anonymous. Hence, Appellant would be a constant peril to himself and the safety of other seamen on board ship. Merchant vessels are not considered to be suitable rehabilitation centers for persons in Appellant's condition. The order of revocation will stand.

ORDER

The order of the Examiner dated at New York, New York, on 24 March 1958, is ~~REVERSED~~ **AFFIRMED**.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 13th day of January 1959.